

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK-----X  
ADAGELIS BAY,

Plaintiff,

- against -

COMMISSIONER OF SOCIAL SECURITY,

Defendant.  
-----X

: 20-CV-9774 (RWL)

**ORDER: ATTORNEYS' FEES****ROBERT W. LEHRBURGER, United States Magistrate Judge.**

Earlier in this case, Plaintiff successfully obtained remand of an adverse decision denying her application for Social Security Disability benefits. Following remand, Plaintiff successfully obtained a substantial award of retroactive benefits. Plaintiff's counsel previously received \$3,640 under the Equal Access to Justice Act ("EAJA"). Plaintiff's counsel now has applied for an award of attorneys' fees for counsel's work on this court action in the amount of \$28,285.25 pursuant to 42 U.S.C. § 406(b)(1). The Court has reviewed the parties' respective filings and GRANTS an award of the requested fees.

Section 406 discretely addresses attorneys' fees expended in connection with administrative proceedings, 42 U.S.C. § 406(a), and those in connection with a challenge in court, 42 U.S.C. § 406(b). Under Section 406(b), attorneys' fees may not exceed 25 percent of the total past-due benefits to which the claimant is entitled. 42 U.S.C. § 406(b)(1)(A). The 25 percent cap applies only to fees for representation before the court, not the agency; although Section 406(a) also has a cap, the Supreme Court has held that the cap under Section 406(b) is not a cap on the aggregate of fees awarded under Sections 406(a) and 406(b). *Culbertson v. Berryhill*, 139 S. Ct. 517, 519 (2019).

Another source of attorneys' fees for social security disability cases is the EAJA. If, however, an attorneys' fees award under Section 406(b) exceeds the EAJA funds received, then the claimant's attorney must refund to the claimant the amount of the smaller fee. In other words, there is a dollar-for-dollar offset of any 42 U.S.C. 406(b) fee by an EAJA award. See *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002).

Typically, as here, social security benefit practitioners work on a contingency-fee arrangement. The Court is charged with the obligation to review such arrangements for reasonableness. *Gisbrecht*, 535 U.S. at 808 (2002). In assessing reasonableness, the Court considers, among other factors, the character of the representation and the result obtained. *Id.* at 808. The Court also considers whether the contingency arrangement is the result of fraud or over-reaching and whether the fee would bring a windfall to claimant's counsel. *Wells v. Sullivan*, 907 F.2d 367, 372 (2d Cir. 1990).

The Court finds that the amount requested here is reasonable and is neither the result of fraud or over-reaching, nor a windfall to counsel. The amount requested is less than 25 percent of the claimant's retroactive benefits. Plaintiff's counsel expended 15.2 attorney hours of work on the case, which amount the Court deems reasonable in light of the tasks performed. Considering the hours expended together with the amount of fees requested yields a *de facto* hourly rate of approximately \$1,861. Although quite high in isolation, it is not unreasonable given the contingency arrangement and is in line with amounts that courts have found reasonable given the sum Plaintiff has recovered in these types of cases. See *Fields v. Kijakazi*, 24 F.4<sup>th</sup> 845 (2d Cir. 2022).

Accordingly, Plaintiff's motion is GRANTED, and Plaintiff's counsel shall receive \$28,285.25 in attorneys' fees. Upon receipt of fees, Plaintiff counsel shall refund \$3,640 to Plaintiff, being the amount Plaintiff's counsel received under the EAJA.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'R. Lehrburger', written over a horizontal line.

ROBERT W. LEHRBURGER  
UNITED STATES MAGISTRATE JUDGE

Dated: February 6, 2025  
New York, New York

Copies transmitted this date to all counsel of record.